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This reasoning, however, is erroneous; for it would apply to covenants, and yet covenants pass with part of the reversion. *Twynam v. Pickard*, 2 B. & Ald. 105. The true basis for the rule is the law's hostility to a forfeiture.

**LEGACIES AND DEVISES — LAPSED BEQUESTS AND DEVISES — PROVISION TO CANCEL A BOND.** — A husband and wife joined in a mortgage bond to X. X, for the purpose of benefiting the wife, made a provision in her will cancelling the mortgage. The wife predeceased X. *Held*, that the husband is bound on the mortgage. *Simmons' Estate*, 65 Leg. Int. 406 (Dist. Ct., Pa., July 7, 1908).

A provision in a will cancelling the legatee's obligation on a bond given to the testator lapses on the legatee's predecease of the testator. *Toplis v. Baker*, 2 Cox Ch. 118. Nor will the fact that there is a surviving co-obligor prevent a lapse, if that co-obligor is not an object of the testator's bounty. *Maitland v. Adair*, 3 Ves. Jr. 231; *Izon v. Butler*, 2 Price 34. These decisions are in direct support of the principal case, since the cancellation of the bond was construed as a legacy to the wife. One case has been found, however, which holds that a provision in a will to cancel a bond does not lapse on the legatee's predecease. *Sibthorp v. Moxton*, 1 Ves. 48. But that case proceeds on the ground that it was the testator's intent to benefit the legatee's family. The correctness of the decision is very doubtful, for the members of the family are practically made beneficiaries without being mentioned in the will. See *Toplis v. Baker*, *supra*. Whatever its merits, it does not affect the present case, for here the sole intent of the testatrix was to benefit the wife.

**MORTGAGES — FORECLOSURE — PROVISION FOR ACCELERATION OF DEBT.** A mortgage provided that upon a default of thirty days in the payment of interest the mortgagee might elect to treat the whole debt as due. The mortgagor was not actually insolvent, but his affairs were placed in the hands of temporary receivers. The interest became due and the receivers allowed it to remain unpaid thirty days. The mortgagee thereupon sued to foreclose, but the mortgagor, having resumed business on the discharge of the receivers, tendered the interest due. *Held*, that the mortgagee is not entitled to foreclose. *Smith v. Lamb*, 59 N. Y. Misc. 568.

A provision of this kind is generally held not to be in the nature of a penalty or forfeiture, but to be valid and enforceable in equity as at law. *Pizer v. Herzig*, 120 N. Y. App. Div. 102; *Mobray v. Leckie*, 42 Ind. 474. Nor will the tender of interest due bar the mortgagee's right to foreclose. *Swearingen v. Lahner*, 93 Ia. 147. Equity, however, will refuse its aid where the enforcement of such a clause would be unconscionable. Accordingly, when the mortgagee has contributed to the default he cannot enforce the stipulation. *De Groot v. McCotter*, 19 N. J. Eq. 531; and see *Pizer v. Herzig*, *supra*. And although the mere negligence of the mortgagor is no excuse, an honest mistake is ground for relief. *Lynch v. Cunningham*, 6 Abb. Pr. (N. Y.) 94; *Martin v. Melville*, 11 N. J. Eq. 222. The facts here present a much stronger case for equitable relief. The court in the exercise of the sovereign power of the state has, by disabling the mortgagor from performance, caused the default. Similar circumstances have been held to excuse the non-performance of contracts. *Malcomson v. Wappoo Mills*, 88 Fed. 680. *Contra*, *Bolles v. Crescent Drug & Chemical Co.*, 53 N. J. Eq. 614. As it was not shown that the mortgagor would suffer by losing his right to foreclose, the decision accomplishes complete justice.

**MUNICIPAL CORPORATIONS — ASSESSMENT FOR LOCAL IMPROVEMENTS — VARIANCE FROM CONTRACT AS DEFENSE.** — A city council could provide for street improvements only through an ordinance. An ordinance was passed ordering the entire street on which the defendant's property abutted to be paved with brick except that a ten-foot strip was to be paved with crushed granite. A contract in conformity with this ordinance was made, but it was later altered to the extent that the whole street was paved with brick. A subsequent ordinance purported to ratify the improvement as so completed, and an assessment